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United Natural Foods, Inc., d/b/a United Natural Foods, Inc. and Supervalu Inc. and International Brotherhood of Teamsters, Local 117

International Brotherhood of Teamsters, Local 117 and Local 313 and United Natural Foods, Inc., d/b/a United Natural Foods, Inc. and Supervalu Inc. Cases 19–CA–249264 and 19–CB–250856

May 11, 2021

ORDER¹

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN
AND RING

United Natural Foods, Inc., d/b/a United Natural Foods, Inc. and Supervalu, Inc.’s (UNFI) request for special permission to appeal the Regional Director’s February 24, 2021 Order severing cases, withdrawing complaint in Case 19–CB–250856, and dismissing charge in Case 19–CB–250856 is denied. The request is not properly before the Board.

Under Section 102.18 of the National Labor Relations Board’s Rules and Regulations, the Regional Director has the prosecutorial discretion to withdraw a complaint sua sponte at any time before the hearing. *NLRB v. United Food & Commercial Workers, Local 23, AFL–CIO*, 484 U.S. 112, 119, 125–130 (1987); see 29 U.S.C. § 153(d). His exercise of that discretion is not subject to Board or court review. *Sheet Metal Workers International Association, Local 28, AFL–CIO (American Elgen)*, 306 NLRB 981, 981–982 (1992). Instead, UNFI may appeal the Regional Director’s decision to withdraw the complaint to the General Counsel consistent with Section 102.19.

We reject UNFI’s claim that the Regional Director was not permitted to withdraw the complaint because UNFI’s February 1, 2021 motion to sever Case 19–CA–249264, to transfer Case 19–CB–250856 to the Board, and for summary judgment in Case 19–CB–250856 was still pending with the Board. Although UNFI had filed its motion for summary judgment before the Regional Director withdrew the complaint, the case had not yet transferred to the Board. See 29 C.F.R. §§ 102.24; 102.50.² Under such circumstances, we cannot say that the complaint had

“advanced so far into the adjudicatory process that a dismissal takes on the character of an adjudication.”³ *American Elgen*, 306 NLRB at 982; see *AM/NS Calvert, LLC*, No. 15–CA–244523 et al., 2021 WL 674944, at *1 (Feb. 19, 2021) (finding regional director’s withdrawal of complaints, notwithstanding pending Motion for Summary Judgment, authorized by Sec. 102.18).

Because the Regional Director’s Order is not reviewable by the Board, we do not consider UNFI’s additional claims as to the propriety of President Biden’s removal of former General Counsel Peter Robb and his appointment of Acting General Counsel Peter Sung Ohr. In any event, even assuming, arguendo, that the Board would have jurisdiction to review the actions of the President, we have determined that it would not effectuate the policies of the Act to exercise this jurisdiction. *National Assn. of Broadcast Employees & Technicians—the Broadcasting & Cable Television Workers Sector of the CWA Local 51*, 370 NLRB No. 114, slip op. at 2 (2021).

Dated, Washington, D.C. May 11, 2021

Lauren McFerran, Chairman

Marvin E. Kaplan, Member

John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² Under the Board’s Rules, “[u]pon receipt of the motion [for summary judgment], the Board may deny the motion or issue a Notice to Show Cause why the motion may not be granted. If a Notice to Show Cause is issued, the hearing, if scheduled, will normally be postponed indefinitely.” 29 C.F.R. § 102.24(b). If the Board issues a Notice to

Show Cause, it will also “order that such complaint and any proceeding which may have been instituted with respect thereto be transferred to and continued before it or any Board Member” before ruling on the motion. Id. § 102.50; see id. § 102.24(a).

³ We do not pass on whether the General Counsel enjoys prosecutorial discretion to dismiss a complaint after issuance of a notice to show cause order transferring the case to the Board.